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August 7, 2019

The Honorable Cynthia M. Rufe
United States District Court
Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street, Suite 12614
Philadelphia, PA 19106-1797

Re: *In re: Generic Pharmaceuticals Pricing Antitrust Litigation*,
16-MD-2724 (E.D. Pa.)

Dear Judge Rufe:

The undersigned counsel (collectively, “Defendants”) write regarding the upcoming August 21, 2019 Leadership Status Conference. In light of Special Master Marion’s expressed intent to have substantive discussions about his forthcoming recommendation for a case management order and discovery schedule at that Leadership Status Conference, we respectfully request that the Court convert the conference to a General Status Conference open to all parties to the MDL.

As the Court is aware, Defense Liaison Counsel do not represent any particular Defendant and they do not have the authority to represent the interests of, or advocate on behalf of, individual Defendants regarding substantive issues that impact all Defendants in the case, such as a proposed case management order and discovery schedule. This is particularly true where, as here, Defendants are situated differently and have varied interests at stake regarding the case management order and discovery schedule. Unlike Lead Counsel for Plaintiffs, Defense Liaison Counsel are only “authorized to perform all necessary *administrative functions*.” (Pretrial Order No. 22, Dkt. No. 343 (emphasis added)); *see also* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 10.221 (2004) (stating liaison counsel is “charged with essentially administrative matters”).

Every Defendant should be allowed to participate in any conference that will include a discussion of substantive issues, such as the August 21 Leadership Status Conference. A case management order and discovery schedule governing the structure and conduct of this MDL directly and significantly impacts the scope of discovery and Defendants’ corresponding rights and obligations under the Federal Rules. Any discussions of those topics are thus inherently

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substantive in nature. If they are discussed at a Leadership Status Conference, only Plaintiffs would have representatives who would be able to advocate for their interests, while Defense Liaison Counsel would be unable to advocate for Defendants' interests. Such an imbalance of representation is one of the reasons why courts are strictly limited in their ex parte communications or proceedings to non-substantive matters. *See* MODEL CODE OF JUDICIAL CONDUCT Canon 2 r. 2.9(A) (AM. BAR ASS'N 2013).

To ensure that all Defendants are adequately represented in connection with the substantive discussions related to any proposed case management order and discovery schedule, Defendants respectfully request that the Court convert the August 21 Leadership Status Conference to a General Status Conference.

Respectfully submitted,

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